

44
No. 2580

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. W. RAPPLE,

Petitioner and Appellant,

vs.

HARRY A. DUTTON, as Trustee of the Estate of
LENNIG ENGINEERING COMPANY, a Corporation, Bankrupt,

Respondent and Appellee.

In the Matter of LENNIG ENGINEERING COMPANY, a Corporation, Bankrupt.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved
July 1, 1898, to Revise, in Matter of Law, an Order
of the United States District Court for the
Northern District of California,
First Division.

AND

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

Filed

MAY 21 1915

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. W. RAPPLE,

Petitioner,

vs.

HARRY A. DUTTON, as Trustee of the Estate of
LENNIG ENGINEERING COMPANY, a
Corporation, Bankrupt,

Respondent.

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation, Bankrupt.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved
July 1, 1898, to Revise, in Matter of Law, an Order
of the United States District Court for the
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First Division.

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RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by omission seems enclosed within

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation,

Bankrupt.

Petition to Revise in Matter of Law.

To the Honorable Judges of the Circuit Court of Ap-
peals of the United States for the Ninth Circuit:

The petition of J. W. Rappale respectfully shows:
That by order of the District Court of the United
States for the Northern District of California the
Lennig Engineering Company, a corporation, was
adjudicated a bankrupt and Harry A. Dutton was
and is duly elected, appointed, qualified and acting
Trustee of the estate of said bankrupt. On the 30th
day of October, 1912, the United States Fidelity &
Guaranty Company of Baltimore, Maryland, had in
its hands the sum of \$783.44 to which your petitioner
and said Trustee both made claim. Thereafter on the
4th day of September, 1913, said Trustee procured
the Referee in bankruptcy in the above-entitled cause
to make an order directing said United States
Fidelity & Guaranty Company of Baltimore, Mary-
land, to pay said sum to said Trustee without
prejudice to the claim of your petitioner thereto.
Thereafter your petitioner filed with said Referee
a petition praying that said Referee make an order
directing said Trustee to pay said sum, or the balance
thereof remaining in the hands of said Trustee, to
your petitioner or to Asbestos Manufacturing &

Supply Company, a corporation, for certain purposes in said petition specified, and said petition was heard upon an agreed statement of facts. Thereafter on the 28th day of May, 1914, an order was made and entered in the said proceeding by said Referee whereby said petition was denied. Thereafter on *on* the 5th day of June, 1914, your petitioner filed his petition for review of said order, which petition came on for hearing before said District Court, and thereafter on the 3d day of October, 1914, by order of said District Court the order of said Referee was affirmed.

That the statement of facts above referred to shows that said fund in the hands of said Trustee was the asset or earning or increment of an asset which formerly belonged to Lennig-Rapple Engineering Company, a copartnership, of which your petitioner was the retiring partner and one E. B. Lennig was the continuing partner after dissolution thereof; that at the time of said dissolution said Lennig agreed to pay the debts of said copartnership and received an assignment of said Rapple's interest in the assets thereof; that said Lennig thereafter assigned said asset from which said fund was produced to the bankrupt herein, which took the same with notice of all the facts; that said Lennig failed to pay the debts of said copartnership, and that a judgment had been recovered against said copartnership by said Asbestos Manufacturing & Supply Company in the sum of \$999.78 upon a debt owing by said copartnership; that said debt and said judgment were unpaid. The question of law presented by said petition was whether, under said facts,

the fund in the hands of said Trustee was subject to the lien or equity of your petitioner to have the same used to pay said Asbestos Manufacturing & Supply Company. Your petitioner contends that said order of said District Court was erroneous in matter of law in that said Court did not so decide, but, on the contrary, denied said petition.

WHEREFORE, your petitioner, feeling aggrieved because of such order, asks that the same be revised in matter of law by your Honorable Court as provided in Sec. 24b of the Bankruptcy Law of 1898 and the rules and practice in such case provided.

J. W. RAPPLE,
Petitioner.

DAVID L. LEVY,
J. C. CAMPBELL,
WEAVER, SHELTON & LEVY,
Attorneys for *Attorney*.

State of California,
City and County of San Francisco,—ss.

J. W. Rappple, being first duly sworn, deposes and says: That he is the petitioner mentioned in the foregoing petition; that he has read the foregoing petition; and knows the contents thereof and that he hereby makes solemn oath that the statement of facts therein contained is true according to the best of his knowledge, information and belief.

J. W. RAPPLE.

Subscribed and sworn to before me this 6th day of March, 1915.

[Seal]

E. W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 2580. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Rapple, Petitioner, vs. Harry A. Dutton, as Trustee of the Estate of Lennig Engineering Company, a Corporation, Bankrupt, Respondent. In the Matter of Lennig Engineering Company, a Corporation, Bankrupt. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court for the Northern District of California, First Division.

Filed March 6, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. W. RAPPLE,

Appellant,

vs.

HARRY A. DUTTON, as Trustee of the Estate of
LENNIG ENGINEERING COMPANY, a
Corporation, Bankrupt,

Appellee.

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation, Bankrupt.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

[Names and Addresses of] Attorneys.

J. C. CAMPBELL, WEAVER, SHELTON &
LEVY, Esquires, Mills Building, San Fran-
cisco, California,

Attorneys for J. W. Rapple.

MANSFIELD & NEWMARK, Esquires, Merchants
Exchange Building, San Francisco, Calif.

Attorneys for Harry A. Dutton, Trustee.

UNITED STATES OF AMERICA.

*District Court of the United States, Northern Dis-
trict of California.*

Clerk's Office—No. 7552.

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation, Bankrupt.

Praeipce [for Transcript of Record].

To the Clerk of Said Court:

Sir: Please issue record containing: (1) Petition to review order of Referee; (2) Statement of facts on review thereof with the following corrections and omissions: (A) page 3, line 16, omit the word "Rapple"; (B) page 4, line 14, insert after the word "Copy" the words "of portions"; (C) page 5, lines 26-7, insert in lieu of the words "said corporation" the words "Lennig Engineering Company, a corporation"; (D) Omit all of said exhibit attached to statement except page 4, lines 10-13, beginning with the word "that"; page 5, lines 2-13 beginning with the word "that," page 7, lines 6-12 beginning with the

word "that" and ending with the word "otherwise," lines 22-29 beginning with the word "that"; (3) Order of District Court affirming order of the Referee; (4) Petition for appeal therefrom and allowance of said appeal; (5) Assignment of errors; (6) Citation and return thereon; (7) Stipulation of counsel extending time of appellant to file bond and docket cause to April 15th; (8) Bond on appeal; (9) Stipulation for record on appeal and petition to revise in matter of law.

DAVID L. LEVY,

J. C. CAMPBELL,

WEAVER, SHELTON & LEVY,

Attorneys for J. W. Rapple.

[Endorsed]: Filed at 4 o'clock and — min. P. M.
Mar. 15, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk [1*]

*In the United States Circuit Court of Appeals for
the Ninth District.*

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COMPANY, a Corporation, Bankrupt.

**Stipulation for Record on Appeal and Petition to
Revise in Matter of Law.**

It is hereby stipulated by and between the parties hereto and J. W. Rapple and Harry A. Dutton, Trustee herein, that the record on the appeal of said J. W. Rapple from, and the petition of said J. W. Rapple to revise in matter of law, the order of the

*Page-number appearing at foot of page of certified Transcript of Record.

District Court made October 3, 1914, affirming the order theretofore made by the Referee in bankruptcy, shall consist of the following: (1) Petition to review order of Referee; (2) Statement of facts on review thereof with the following corrections and omissions: (A) page 3, line 16, omit the word "Rapple"; (B) page 4, line 14, insert after the word "copy" the words "of portions"; (C) page 5, lines 26-7, insert in lieu of the words "said corporation" the words "Lenning Engineering Company, a corporation"; (D) Omit all of said exhibit except page 4, lines 10-13, beginning with the word "that"; page 5, line 2-13 beginning with the word "that"; page 7, lines 6-12 beginning with the word "that" and ending with the word "otherwise"; lines 22-29 beginning with the word "that"; (3) Order of District Court affirming order of the Referee; (4) Petition for appeal therefrom and allowance of said appeal; (5) Assignment of errors; (6) Citation and return thereon; (7) Stipulation of counsel extending time of [2] appellant to file bond and docket cause to March 15th; (8) Bond on appeal; (9) This stipulation.

DAVID L. LEVY,

J. C. CAMPBELL,

WEAVER, SHELTON & LEVY,

Attorneys for J. W. Rapple.

MANSFIELD & NEWMARK,

MILTON NEWMARK,

Attorneys for Harry A. Dutton,

Trustee.

It is so ordered:

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Mar. 15, 1915, at 4 o'clock and
— min. P. M. W. B. Maling, Clerk. By Lyle
S. Morris, Deputy Clerk. [3]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation, Bankrupt.

**Petition of J. W. Rapple for Review of Referee's
Order.**

To Honorable A. B. KREFT, Referee in Bank-
ruptcy:

The petition of J. W. Rapple respectfully shows that your petitioner heretofore filed herein a petition for an order directing the Trustee herein to pay to Asbestos Manufacturing & Supply Company, a corporation, the sum of \$783.44, or the balance thereof remaining in the hands of said Trustee, which sum had been received by said Trustee from United States Fidelity & Guaranty Company of Baltimore, a corporation.

That on the 28th day of May, 1914, an order was made and entered herein wherein and whereby said petition was denied and which order was in words following:

“The petition of J. W. Rapple herein is hereby denied.”

That said order was and is erroneous in that said petition and the testimony adduced in support thereof shows that said fund in the hands of said

Trustee was the asset or the earning or increment of an asset which formerly belonged to Lennig-Rapple Engineering Company, a copartnership of which said petitioner, J. W. Rapple, was the retiring and one E. B. Lennig was the continuing partner after dissolution of said copartnership. That at the time of said dissolution said Lennig agreed [4] to pay the debts of said copartnership, and received an assignment of said Rapple's interest in the assets thereof. That said Lennig failed to pay such debts and that a judgment had been recovered against said copartnership by said Asbestos Manufacturing & Supply Company in the sum of \$999.78 upon a debt owing by said copartnership. That said debt and said judgment were and are unpaid.

WHEREFORE, your petitioner, feeling aggrieved because of such order, prays that the same may be reviewed as provided in the Bankruptcy Law and General Order No. 27.

Dated June 5, 1914.

J. W. RAPPLE,
Petitioner.

J. C. CAMPBELL,
WEAVER, SHELTON & LEVY,
Attorneys for Petitioner.

State of California,
City and County of San Francisco,—ss.

I, J. W. Rapple, the petitioner mentioned in the foregoing petition, do hereby make solemn oath that the statement of facts therein contained is true according to my best knowledge, information and belief.

J. W. RAPPLE.

Subscribed and sworn to before me this 5th day of June, 1914.

[Seal] EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California. [5]

Receipt of a copy hereof is hereby acknowledged this 5th day of June, 1914.

MANSFIELD & NEWMARK.

[Endorsed]: Filed Jun. 5, 1914, at 11 o'clock and — min. A. M. A. B. Kreft, Referee in Bankruptcy. [6]

In the District Court of the United States for the Northern District of California, First Division.

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COMPANY, a Corporation, Bankrupt.

Statement of Facts on Review of Referee's Order upon Petition of J. W. Rapple.

On or about the 14th day of September, 1910, Lennig-Rapple Engineering Company, a copartnership consisting of the petitioner, J. W. Rapple, and E. B. Lennig, and having its principal place of business in said City and County of San Francisco, State of California, entered into a contract with the City and County of San Francisco, State of California, for the performance of certain labor and the furnishing of certain materials in the construction of a building to be erected by said City and County of San Francisco. At the same time the United States

Fidelity & Guaranty Company of Baltimore, Maryland, executed and delivered to said City and County of San Francisco its bond conditioned upon the due performance of said contract by said Lennig-Rapple Engineering Company. Said Lennig-Rapple Engineering Company commenced the performance of said contract and continued therein until the 30th day of December, 1910, at which date it had completed about 40% thereof.

On said 30th day of December, 1910, said Lennig-Rapple Engineering Company was dissolved and said J. W. Rapple retired [7] from the business which had theretofore been conducted by said partnership, and said E. B. Lennig continued to carry on said business.

Upon said dissolution said J. W. Rapple assigned, transferred and set over unto said E. B. Lennig all his right, title and interest in and to all of the assets and property which had theretofore belonged to said copartnership, including said contract with said City and County of San Francisco and at the same time it was agreed by and between the said J. W. Rapple and E. B. Lennig that said E. B. Lennig should assume the debts and obligations of said copartnership. Thereafter, on the 3d day of January, 1911, a notice of said dissolution and of said agreement on the part of said E. B. Lennig was published in a newspaper of general circulation in the City and County of San Francisco, State of California.

On the 5th day of August, 1911, said E. B. Lennig procured the incorporation under the laws of the State of California of Lennig Engineering Company.

Immediately thereafter said E. B. Lennig assigned, transferred and set over unto said Lennig Engineering Company, a corporation, all his right, title and interest in and to the assets and property which had formerly belonged to said Lennig-Rapple Engineering Company, a copartnership, including said contract between said Lennig-Rapple Engineering Company and said City and County of San Francisco. In consideration for the same, said Lennig procured said corporation to issue to him all of the capital stock of said corporation with the exception of four shares thereof, which were issued in the names of four other persons for the sole purpose of qualifying them to act as directors of said corporation. Said four other persons at no time had any real or actual interest in said corporation or in the business thereof. All [8] of the shares of the capital stock of said corporation excepting said four shares were thereafter and still and now are held by and in the name of said E. B. Lennig and said E. B. Lennig has at all times been and still and now is the sole person really and actually interested in said corporation or in the business thereof, and said corporation has at all said times been under his direction and in his control. At the time of said assignment, transfer and setting over by said Lennig of said assets of said corporation, said corporation had full and complete knowledge of all the facts hereinabove set forth.

After said dissolution said Lennig, as an individual, performed about 15% of the work of said contract and thereafter Lennig Engineering Company,

a corporation, performed about 15% of said work, but thereupon desisted and did no further act in the performance of the same and failed further to perform and failed to complete said contract. Thereafter, on the 13th day of May, 1912, said United States Fidelity & Guaranty Company of Baltimore, Maryland, as such surety for the performance of said contract undertook to complete the performance thereof and thereafter on or about the 20th day of October, 1912, duly and fully performed and completed the same, performing about 30% of said work. All materials and labor used in the performance thereof have been fully paid for and no claim is made for the price or value of any such materials or labor either in this proceeding or elsewhere. As a result of said performance, said United States Fidelity & Guaranty Company of Baltimore, Maryland, has received the sum of \$783.44 over and above the sum expended in the performance of said contract. ?

On the 30th day of December, 1910, said Lennig-Rapple [9] Engineering Company, a copartnership, was indebted to Asbestos Manufacturing & Supply Company, a corporation, organized and existing under and by virtue of the laws of the State of California. * Thereafter, on the 24th day of October, 1912, said Asbestos Manufacturing & Supply Company, a corporation, recovered a judgment in the Superior Court of the State of California in and for the City and County of San Francisco, against said Lennig-Rapple Engineering Company, a copartnership, for the sum of \$999.78. The verified answer of

defendant, filed in said action, was introduced at the hearing, and a copy of portions thereof is attached hereto and marked Exhibit "A." The claim of said Asbestos Manufacturing & Supply Company against said copartnership was for labor performed and materials furnished under another contract between said copartnership and said City and County of San Francisco. Neither said debt owing to, nor said judgment recovered by, said Asbestos Manufacturing & Supply Company has been paid.

On the 30th day of October, 1912, said J. W. Rapple made demand upon said United States Fidelity & Guaranty Company of Baltimore, Maryland, that the latter pay said sum of \$783.44 for the purpose of applying the same upon said indebtedness owing to the said Asbestos Manufacturing & Supply Company, or pay said sum to said Asbestos Manufacturing & Supply Company on behalf of said Rapple and of said copartnership. The Trustee herein also made demand for the said sum upon said United States Fidelity & Guaranty Company of Baltimore, Maryland, and thereupon procured an order to be made by the Referee in Bankruptcy herein directing said United States Fidelity & Guaranty Company of Baltimore, Maryland, said J. W. Rapple, said E. B. Lennig and said Lennig-Rapple Engineering Company, a copartnership, to appear and show cause before this Court why said sum should [10] not be paid to said Trustee. After proceedings had in the above-entitled cause, said Referee, by order given and made on the 4th day of September, 1913, directed said United States Fidelity & Guaranty Company of Bal-

timore, Maryland, to pay said sum of \$783.44 to said Trustee, without prejudice to the claim of J. W. Rapple as hereinabove set forth. On the 11th day of November, 1913, in compliance with said order, said United States Fidelity & Guaranty Company of Baltimore, Maryland, paid said sum of \$783.44 to said Trustee.

It was stated before said Referee, upon the hearing of said petition of J. W. Rapple, and on behalf of said J. W. Rapple, that his claim is made solely for the purpose of having said fund applied toward the payment of said debt of said copartnership to said Asbestos Manufacturing & Supply Company and that such payment might be made by the Trustee herein direct to said Asbestos Manufacturing & Supply Company. Said E. B. Lennig said in open court that he made no claim to the fund here in question either as an individual or as a member of Lennig-Rapple Engineering Company, a copartnership, but that said contract was assigned by said copartnership to him and by him to Lennig Engineering Company, a corporation.

It is stipulated by the parties hereto that the foregoing statement is a true and correct statement of the facts in connection with the petition of J. W. Rapple and that the same may be incorporated in the Referee's certificate on review of said Referee's order denying said petition.

DAVID L. LEVY,

Attorneys for Petitioner.

MANSFIELD & NEWMARK,

Attorneys for Trustee in Bankruptcy. [11]

Exhibit "A" [Portion of Answer].

* * * * *

That the total of work and material furnished by plaintiff and performed by plaintiff on said structure before the dissolution of said copartnership did not exceed the said \$500.00 in value.

* * * * *

That, at the time of the said dissolution of copartnership, there was nothing due or owing to plaintiff for either work or materials performed on or furnished to said structure or otherwise on the contract alleged or otherwise and that subsequent to said dissolution of said copartnership and long prior to the commencement of this action the said plaintiff accepted the corporation defendant, Lennig Engineering Company, as its debtor for all of its claims for work and materials performed or furnished for said structure and released these defendants and each of them from all liability thereon and thereafter billed all of its said claims to said corporation defendant. [12]

* * * * *

That said copartnership was dissolved by mutual consent of said partners on the 30th day of December, 1910, at which time no extra materials had been furnished for said structure by said plaintiff; that, at the time of said dissolution of said copartnership there was nothing due or owing to plaintiff for extra materials or otherwise, as alleged in said complaint or otherwise;

* * * * *

that subsequent to the said dissolution of said co-

partnership and long prior to the commencement of this action the said plaintiff accepted the corporation defendant, Lennig Engineering Company, as its debtor for all its claims for work and materials performed on or furnished for said structure and released these defendants and each of them from all liability thereon and thereafter billed all of its said claims to said corporation defendant.

[Endorsed]: Filed Aug. 5, 1914. At 11 o'clock and — Min. A. M. A. B. Kreft, Referee in Bankruptcy. [13]

*In the District Court of the United States, in and for
the Northern District of California, First
Division.*

No. 7552.

In the Matter of LENNIG ENGINEERING COMPANY, a Corporation,

In Bankruptcy.

**Order Affirming Order of Referee in Re Claim of
J. W. Rappale Made May 28th, 1914.**

The order of the Referee made May 28th, 1914, brought to this Court for review on petition of J. W. Rappale is hereby affirmed.

October 3d, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 3, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [14]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation,

Bankrupt.

**Petition of J. W. Rapple for Appeal and Order
Allowing Appeal.**

To the Honorable MAURICE V. DOOLING, District
Judge, Presiding in the Above-entitled Court:

J. W. Rapple, who filed a petition in the above-entitled cause for an order directing the Trustee herein to pay to Asbestos Manufacturing & Supply Company, a corporation, \$683.44, which sum had been received by said Trustee from the United States Fidelity & Guaranty Company of Baltimore, a corporation, feeling himself aggrieved by the order made and entered in this cause on the 3d day of October, 1914, denying said petition of said Rapple and affirming the order of the Referee in Bankruptcy herein denying said petition of said Rapple made and entered on the 28th day of May, 1914, does hereby appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit for the reason specified in the assignment of errors filed herewith and does hereby respectfully pray that this, his petition for said appeal, be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said order was based, duly authenticated, be sent to said

United States Circuit Court of Appeals for the Ninth Circuit. And said petitioner, desiring [15] to supersede any and all further proceedings in said cause, and particularly the distribution of said sum now in the hands of said Trustee or any part thereof, hereby tenders a bond in such amount as the Court may require for such purpose and prays that with the allowance of said appeal a supersedeas be issued.

Dated October 10, 1914.

DAVID L. LEVY,
J. C. CAMPBELL,
WEAVER, SHELTON & LEVY,
Solicitors for J. W. Rapple.

Order Allowing Appeal With Supersedeas.

On reading and filing the above petition of J. W. Rapple and the assignment of errors presented therewith, it is hereby ORDERED that said appeal be allowed as prayed for and that said appeal shall operate as a supersedeas and shall stay all further proceedings in said cause, and particularly the distribution of said sum or any part thereof, upon the filing by said petitioner of a bond in the sum of \$700.00, with two sufficient sureties.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 10, 1914, at 10 o'clock and
— Min. A. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [16]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 7552—IN BANKRUPTCY

In the Matter of LENNIG ENGINEERING COM-
PANY, a Corporation,

Bankrupt.

Assignment of Errors.

Now comes petitioner and appellant herein, J. W. Rapple, and files the following assignment of errors upon which he will rely on his appeal from the order made by this Honorable Court on the 3d day of October, 1914, in the above-entitled cause:

I.

The Court erred in ordering that the order of Referee in Bankruptcy, made on May 28, 1914, be affirmed.

II.

The Court erred in denying the petition of J. W. Rapple for an order directing the Trustee herein to pay to Asbestos Manufacturing & Supply Company, a corporation, the sum of \$683.44, which sum was received by said Trustee from United States Fidelity & Guaranty Company of Baltimore, a corporation.

III.

The Court erred in that it did not decide upon the admitted facts in the record that said sum of \$683.44 was an asset of the copartnership formerly known as Lennig-Rapple Engineering Company and consisting of E. B. Lennig and J. W. Rapple, which was subject to the lien or equity of said Rapple as the re-

tiring partner to have said fund used to pay the creditor of said former [17] copartnership, to wit, said Asbestos Manufacturing & Supply Company, a corporation, and that said fund had come into the hands of said Trustee impressed with the said lien or equity.

IV.

The Court erred in that it did not decide upon the admitted facts in the record that said fund constituted the proceeds of a contract formerly owned by said copartnership in which said Rapple had assigned his interest to said Lennig upon the agreement of said Lennig to pay the debts of said copartnership, and that since said Asbestos Manufacturing & Supply Company was a creditor of said copartnership and had recovered a judgment against it and said contract and proceeds had not passed into the hands of an innocent purchaser for value, therefore the fund was impressed with the lien or equity of the retiring partner, Rapple, to compel its use in the payment of the copartnership debt.

WHEREFORE, by reason of the errors assigned, appellant prays that said order be reversed.

DAVID L. LEVY,

J. C. CAMPBELL,

WEAVER, SHELTON & LEVY,

Solicitors for Petitioner and Appellant, J. W.
Rapple.

[Endorsed]: Filed Oct. 10, 1914, at 10 o'clock and
 — Min. A. M. W. B. Maling, Clerk. By Lyle S.
 Morris, Deputy Clerk. [18]

GASTON, SNOW & SALTONSTALL, Gen'l
 Counsel.

T. J. FALVEY, JOHN T. BURNETT,
 President. Sec'y and Treas.

MASSACHUSETTS BONDING AND INSUR-
 ANCE COMPANY,

Home Office: Boston, Massachusetts.

SURETY BONDS AND BURGLARY INSUR-
 ANCE.

Employers' Liability Insurance.

Telephones—

Sutter 2750.

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Panama-Pacific-International-Exposition

San Francisco

1915

California.

California Department:

ROBERTSON & HALL, Mgrs.

D. E. DYER, Asst. Mgr.

First National Bank Building

San Francisco, Cal.

*In the District Court of the United States, Northern
 District of California, First Division.*

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COM-
 PANY, a Corporation,

Bankrupt.

Bond on Appeal for Costs and Supersedeas.**KNOW ALL MEN BY THESE PRESENTS:**

That we, J. W. RAPPLE, as principal, and Massachusetts Bonding and Insurance Company, a Corporation, as Surety, are held and firmly bound unto Harry A. Dutton, Trustee, in the above-entitled cause, in the amount of \$700.00 to be paid to said Trustee, his successors or assigns for the payment of which sum well and truly to be made we bind ourselves and each of us, our and each of our heirs, successors, executors and administrators, jointly and severally, firmly by [19] these presents. Sealed with our seals and dated this 2d day of March, 1915.

WHEREAS said J. W. Rapple, petitioner in the above-entitled cause, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from an order of the District Court of the United States, for the Northern District of California, made and entered herein on the 3d day of October, 1914, and

WHEREAS said J. W. Rapple desires during the progress of said appeal to stay the proceedings in said cause, and particularly the distribution of the sum of \$683.44 now in the hands of said Trustee or any part thereof;

NOW, THEREFORE, the condition of this obligation is such that if the above-named appellant shall prosecute said appeal with effect and pay all costs which may be awarded against him as such appellant, if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for

the Ninth Circuit in said cause or on the mandate of said United States Circuit Court of Appeals, then this obligation shall be void, otherwise the same shall remain in full force and effect.

MASSACHUSETTS BONDING AND INSURANCE COMPANY. (Seal)

By: FRANK M. HALL,
And: S. M. PALMER,
Attorneys in Fact.

[Endorsed]: Filed Mar. 6, 1915, at 11 o'clock and 45 Min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [20]

In the District Court of the United States, Northern District of California, First Division.

No. 7552—IN BANKRUPTCY.

In the Matter of LENNIG ENGINEERING COMPANY, a Corporation,

Bankrupt.

Stipulation Extending Time [to Docket Cause, etc.].

It is hereby stipulated by and between the parties hereto that the appellant, J. W. Rapple, may have to and including the 15th day of April, 1915, within which to file his bond on appeal, docket cause and for supersedeas.

Dated March 12, 1915.

MANSFIELD & NEWMARK.
MILTON NEWMARK.

So ordered:

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed at 4 o'clock and ——— Min. P. M.
Mar. 15, 1915. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [21]

**Certificate of Clerk U. S. District Court to Transcript
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing twenty-one (21) pages, numbered from 1 to 21, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Lennig Engineering Company, a Corporation, Bankrupt, numbered 7552, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "Praeceptum" and "Stipulation for Record on Appeal and Petition to Revise in Matter of Law," copies of which are embodied in this transcript, and the instructions of the attorneys for appellant herein.

I further certify that the costs for preparing and certifying the foregoing Transcript on Appeal is the sum of Ten and 80/100 (\$10.80) Dollars; and that the same has been paid to me by the attorneys for the appellant herein.

Annexed hereto is the Original Citation on Appeal issued herein (pages 23 and 24).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 8th day of April, A. D. 1914.

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled April 8, 1915. C. W. C.] [22]

Citation on Appeal—Original.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Harry A. Dutton, Trustee of the Estate of Lennig Engineering Company, a Corporation, Bankrupt, Walter D. Mansfield, Milton Newmark and Mansfield & Newmark, Solicitors for Said Trustee and to the Creditors of Said Bankrupt, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein J. W. Rapple, who filed a petition in the Matter of Lennig Engineering Company, a Corporation, Bankrupt, pending in said court, for an order directing you, the said trustee, to pay to Asbestos Manufacturing & Supply Com-

pany, a Corporation, the sum of \$683.44, which sum had been received by you, the said trustee, from United States Fidelity and Guaranty Company of Baltimore, Maryland, a corporation, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 10th day of October, A. D. 1914.

M. T. DOOLING,
United States District Judge. [23]

[Endorsed]: No. 7552, United States District Court for the District of California. In the Matter of the Estate of Lennig Engineering Company, Bankrupt, Appellant. Citation on Appeal. Filed Oct. 10, 1914, at 12 o'clock and 45 Min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

[Endorsed]: No. 2580. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Rapple, Appellant, vs. Harry A. Dutton, as Trustee of the Estate of Lennig Engineering Company, a Corporation, Bankrupt, Appellee. In the Matter of the Lennig Engineering Company, a Corporation, Bankrupt. Transcript of Record. Upon Appeal

from the United States District Court for the Northern District of California, First Division.

Filed April 15, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

In the Circuit Court of Appeals, Ninth Circuit.

No. —.

In the Matter of LENNIG ENGINEERING COMPANY,

Bankrupt.

J. W. RAPPLE,

Appellant,

vs.

HARRY A. DUTTON, Trustee,

Respondent.

**Stipulation [and Order Allowing Appellant to
December 15, to Docket Cause, etc.].**

It is hereby stipulated by and between the parties to this appeal that appellant may have to and including the 15th day of December, 1914, in which to docket the above cause and to file his bond on appeal.

MANSFIELD & NEWMARK,

Attorneys for Respondent.

DAVID L. LEVY,

Attorney for Appellant.

So ordered:

WM. W. MORROW,
Circuit Judge.

[Endorsed]: No. 2580. In the Circuit Court of Appeals, Ninth Circuit. In the Matter of Lennig Engineering Company, Bankrupt. J. W. Rapple, Appellant, vs. Harry A. Dutton, Trustee, Respondent. Stipulation Extending Time to Docket Cause and File Bond. Filed Nov. 18, 1914. F. D. Monckton, Clerk, Refiled May 1, 1915. F. D. Monckton, Clerk.

